

Introduced by Senator Ducheny

February 26, 2009

An act to amend Sections 13201, 13205, and 13388 of, and to add Section 13232 to, the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 413, as introduced, Ducheny. California regional water quality control boards: membership and program withdrawal.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Existing law designates the state board as the state water pollution control agency for all purposes stated in the Clean Water Act and any other federal act. Federal regulations provide for program revision and withdrawal and the voluntary transfer of program responsibilities when a state program no longer complies with the requirements of the Clean Water Act and the state fails to take corrective action.

This bill would make legislative findings and declarations related to the regional boards and their responsibilities under the Clean Water Act and Porter-Cologne.

The bill would authorize the state board to order the commencement of withdrawal proceedings with regard to a regional board's program authority on the state board's own initiative or in response to a petition from an interested person. If the state board concludes that a regional board has substantially and continually failed to administer water quality programs in conformity with the appropriate acts and regulations, the

state board would be required to list the deficiencies in the program, and provide the regional board a reasonable time to take corrective action. If the regional board fails to take the appropriate corrective action within the prescribed timeframe, the state board would be required to either withdraw the regional board's program authority or set a schedule for review of program authority after a probationary period. The bill would require any withdrawal order to state whether the state board or another regional board would become the implementing agency within the jurisdiction of the former regional board.

(2) The Porter-Cologne establishes 9 regions for the purposes of the act, each governed by a California regional water quality control board comprised of 9 members appointed by the Governor, with prescribed experience or associations. The act requires that each regional board member represent and act on behalf of all the people and reside or have a principal place of business within the region. Under the act, if an appointment cannot be made for the county government member because of a restriction under existing law on income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements, the act authorizes the appointment of persons not specifically associated with any category.

This bill would revise those provisions to establish regional boards of 7 members, to be appointed by the Governor. Each member would be required to be appointed on the basis of his or her demonstrated interest and proven ability in the field of water quality, including water pollution prevention, water pollution control, and understanding of water pollution and related water resource management problems in his or her region, and his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board.

(3) Existing law provides that each member of a regional board receive \$100 for each day that member is engaged in the performance of official duties, except as specified, and that the total compensation received by members of each regional board not exceed, in any one fiscal year, the sum of \$13,500.

This bill would provide that each regional board member may receive \$500 for each day that member is engaged in the performance of official duties. The bill would provide that the total compensation received by a regional board member in any fiscal year may not exceed \$30,000.

(4) Existing law prohibits a person from being a member of the state board or a regional board if that person receives, or has received, during

the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements.

This bill would revise this provision with regard to regional boards by specifying that no person shall be a regional board member if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements, or applicants for waste discharge requirements, associated with discharges in that region.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) The 1949 Dickey Water Pollution Act established nine
4 regional water boards located in each of the major California
5 watersheds. The regional boards have primary responsibility for
6 overseeing and enforcing the state's pollution abatement programs.
7 The act established five gubernatorial appointees, representing
8 water supply, irrigated agriculture, industry, and municipal and
9 county government in that region, to serve on each regional water
10 board. This number has since grown to nine members and includes
11 a public member seat, two members with special competence in
12 water quality, and a seat for a member associated with a recreation,
13 fish, or wildlife nongovernmental organization.

14 (b) The complexity of water quality and water supply laws and
15 technologies in the intervening 58 years has grown exponentially,
16 while the expertise and low pay on the regional boards have
17 remained relatively constant. The significant complexity of
18 problems and laws brings an increased need for expertise on the
19 regional board, yet the substantive requirements for the regional
20 board member position have not similarly increased. The large
21 number of appointments (81 regional board members) makes
22 tracking the members' performance difficult, heightening the need
23 for the clear, strong expertise of each board member.

24 (c) The federal Clean Water Act (33 U.S.C. Sec. 1252 et seq.)
25 envisions delegation of water pollution control responsibility to
26 the states. Federal regulations establish procedures for approving

1 a state program and the responsibilities of that program. Provisions
2 for withdrawal of that authority are found at Section 123.63 of
3 Part 40 of the Code of Federal Regulations and state that the United
4 States Environmental Protection Agency may withdraw federal
5 approval when a state program no longer complies with the
6 requirements of the Clean Water Act and the state fails to take
7 corrective action. These circumstances include the state's failure
8 to issue permits, act on violations of permits or other program
9 requirements, seek adequate enforcement penalties or collect
10 administrative fines when imposed, inspect and monitor activities
11 subject to regulation, or develop an adequate regulatory program
12 for developing water quality-based effluent limits in national
13 pollutant discharge elimination system permits.

14 (d) The Porter-Cologne Water Quality Control Act (Division 7
15 (commencing with Section 13000) of the Water Code) designates
16 the state board as the state water pollution control agency for all
17 purposes stated in the Clean Water Act and any other federal act.
18 Section 13260 of the act places responsibility on the regional
19 boards for ensuring that waste discharge reports are filed by any
20 person discharging, or proposing to discharge, waste in any region
21 that could affect the quality of "waters of the state," and that
22 appropriate regulatory action is taken after the filing of the reports.
23 The act defines "waters of the state" as "any surface water or
24 groundwater, including saline waters, within the boundaries of the
25 state."

26 (e) California is the only state in the nation with autonomous
27 regional water boards that implement the Clean Water Act program
28 requirements.

29 (f) Numerous state and federal mandates are not being met in
30 California. They include the following:

31 (1) Section 305(b) of the Clean Water Act requires each state
32 to prepare a water quality report at least every two years; California
33 has not submitted a report to the United States Environmental
34 Protection Agency since 2002. Moreover, despite the mandate that
35 all waters are to be assessed, the 2002 document reports only on
36 the health of one-third of the state's lakes and reservoirs, 22 percent
37 of the state's coastal shoreline miles, and a mere 15 percent of
38 river and stream miles.

39 (2) Although Porter-Cologne requires the regional boards to
40 regulate all discharges to surface water or groundwater that "could

1 affect the quality of the waters of the state,” every one of the
2 regional boards has failed to regulate one or more major sources
3 of polluted runoff into surface water, and there is virtually no such
4 regulation of discharges to groundwater. As a result, polluted runoff
5 is implicated in more than 76 percent of the waters identified as
6 “impaired” in California.

7 (3) The state has established approved cleanup plans for only
8 a handful of the water bodies listed as “impaired” for one or more
9 pollutants, and only a small fraction of those waters have since
10 been deemed “clean.” Many of these listings will not have cleanup
11 plans before 2019, with no deadlines set for actual cleanup of the
12 waters listed.

13 (4) A February 2000 report by the Legislative Analyst’s Office
14 identified numerous deficiencies in permit issuance, inspections,
15 inconsistencies in enforcement across the state, inadequate
16 enforcement followup, and other problems, most of which continue
17 today.

18 (5) An August 2006 state board enforcement report to the
19 Legislature concluded that the water board staff does not detect
20 violations for several months after they occur and showed
21 significantly variable numbers of enforcement actions and violation
22 rates across regional water boards.

23 SEC. 2. Section 13201 of the Water Code is amended to read:

24 13201. (a) There is a regional board for each of the regions
25 described in Section 13200. Each board shall consist of ~~the~~
26 ~~following nine~~ *seven* members appointed by the Governor, each
27 of whom shall represent, and act on behalf of, all the people, and
28 shall reside or have a principal place of business within the ~~region:~~
29 ~~region.~~

30 ~~(1) One person associated with water supply, conservation, and~~
31 ~~production.~~

32 ~~(2) One person associated with irrigated agriculture.~~

33 ~~(3) One person associated with industrial water use.~~

34 ~~(4) One person associated with municipal government. Upon~~
35 ~~the next vacancy occurring in this office on or after January 1,~~
36 ~~2004, this person shall be a city council member or mayor.~~

37 ~~(5) One person associated with county government. Upon the~~
38 ~~next vacancy occurring in this office on or after January 1, 2004,~~
39 ~~this person shall be a county supervisor.~~

1 ~~(6) One person from a responsible nongovernmental~~
2 ~~organization associated with recreation, fish, or wildlife.~~

3 ~~(7) Three persons not specifically associated with any of the~~
4 ~~foregoing categories, two of whom shall have special competence~~
5 ~~in areas related to water quality problems.~~

6 *(b) Each member shall be appointed on the basis of his or her*
7 *demonstrated interest and proven ability in the field of water*
8 *quality, including water pollution prevention, water pollution*
9 *control, and understanding of the water pollution and related*
10 *water resource management problems in his or her region.*

11 *(c) Each member shall be appointed on the basis of his or her*
12 *ability to attend substantially all meetings of the regional board,*
13 *and to actively discharge all duties and responsibilities of a*
14 *member of the regional board.*

15 ~~(b)~~

16 *(d) All persons appointed to a regional board shall be* ~~are~~ *subject*
17 *to Senate confirmation, but shall* ~~are~~ *not be required to appear*
18 *before any committee of the Senate for purposes of such*
19 *confirmation, unless specifically requested to appear by the Senate*
20 *Committee on Rules.*

21 ~~(e)~~

22 *(e) Insofar as practicable, appointments shall be made in such*
23 *manner as to result in representation on the board from all parts*
24 *of the region.*

25 ~~(d) Notwithstanding subdivision (a), if appointments cannot be~~
26 ~~made pursuant to paragraph (5) of subdivision (a) because of the~~
27 ~~requirements of Section 13388, those appointments may be made~~
28 ~~of persons not specifically associated with any category.~~

29 SEC. 3. The reduction in the number of members on each
30 regional board required by subdivision (a) of Section 13201 of the
31 Water Code, as amended by Senate Bill ____ of the 2009–10
32 Regular Session of the Legislature, shall be achieved according to
33 the ordinary expiration of terms of incumbents and other vacancies.
34 After a regional board consists of only seven members, an
35 individual subsequently appointed to fill a vacancy shall possess
36 the qualifications specified in Section 13201 of the Water Code.

37 SEC. 4. Section 13205 of the Water Code is amended to read:

38 13205. Each member of a regional board shall receive ~~one~~ *five*
39 ~~hundred dollars (\$100)~~ *hundred dollars (\$500)* for each day during which that
40 member is engaged in the performance of official duties, *including*

1 *preparation for regional board meetings*, except that no member
 2 shall be entitled to receive the ~~one five~~ hundred dollars ~~(\$100)~~
 3 ~~(\$500)~~ compensation if the member otherwise receives
 4 compensation from other sources for performing those duties. The
 5 total compensation received by members of each regional board
 6 shall not exceed, in any one fiscal year, the sum of ~~thirteen~~ thirty
 7 thousand ~~five hundred~~ dollars ~~(\$13,500)~~ (\$30,000). A member
 8 may decline compensation. *The annual compensation provided*
 9 *by this section shall be increased in any fiscal year in which a*
 10 *general salary increase is provided for state employees. The*
 11 *amount of the increase provided by this section shall be*
 12 *comparable to, but shall not exceed, the percentage of the general*
 13 *salary increases provided for state employees during that fiscal*
 14 *year.* In addition to the compensation, each member shall be
 15 reimbursed for necessary traveling and other expenses incurred in
 16 the performance of official duties.

17 SEC. 5. Section 13232 is added to the Water Code, to read:

18 13232. (a) (1) The state board may order the commencement
 19 of program withdrawal proceedings on its own initiative or in
 20 response to a petition from an interested person alleging the
 21 substantial and continuing failure of a regional board to comply
 22 with the requirements of this division or the federal Clean Water
 23 Act. These circumstances include, but are not limited to, the
 24 following:

25 (A) Substantial and continuing failure to exercise adequate
 26 control over activities required to be regulated under applicable
 27 state or federal law, including failure to issue permits, waste
 28 discharge requirements, or waivers of waste discharge
 29 requirements.

30 (B) Repeated issuance of permits, waste discharge requirements,
 31 or waivers of waste discharge requirements that do not conform
 32 to the requirements of applicable state or federal law.

33 (C) Substantial and continuing failure to conduct adequate
 34 oversight over discharges subject to memoranda of agreement or
 35 understanding with other agencies.

36 (D) Substantial and continuing failure to comply with the public
 37 participation requirements of applicable state or federal law.

38 (E) Substantial and continuing failure to meet the discharger
 39 identification, inspection, penalty enforcement, and other
 40 requirements of the regional board's enforcement program.

1 (F) Substantial and continuing failure to develop an adequate
2 regulatory program for developing water quality-based effluent
3 limits in National Pollution Discharge Elimination System permits.

4 (2) The state board shall respond in writing to any petition to
5 commence regional board program withdrawal proceedings, and
6 may conduct an informal investigation of the allegations in the
7 petition to determine whether cause exists to commence
8 proceedings under this section. The state board's order
9 commencing proceedings under this section shall fix a time and
10 place for the commencement of the hearing and shall specify the
11 allegations against the regional board that are to be considered at
12 the hearing. Within 30 days the regional board shall admit or deny
13 these allegations in a written answer. The party seeking withdrawal
14 of the regional board's program shall have the burden of producing
15 the evidence in a hearing under this paragraph.

16 (b) If the state board concludes that the regional board has
17 substantially and continually failed to administer mandated state
18 and federal water quality programs in conformity with the
19 appropriate acts and regulations, the state board shall list the
20 deficiencies in the program or programs and provide the regional
21 board a reasonable time, not to exceed 90 days, to take such
22 appropriate corrective action as the state board determines
23 necessary.

24 (c) Corrective actions shall include specific requirements for
25 issuing permits, conducting more frequent inspections and
26 evaluations, and taking additional enforcement actions, in addition
27 to other actions necessary for improving regional board
28 performance.

29 (d) Within the timeframe prescribed by the state board, the
30 regional board shall take such appropriate corrective action as
31 required by the state board, and shall file with the state board and
32 all parties a statement certified by the regional board that
33 appropriate corrective action has been taken and that funding has
34 been established to support continuation of each corrective action,
35 as needed. The state board may require a further showing in
36 addition to the certified statement.

37 (e) If the regional board fails to take the appropriate corrective
38 action and file a certified statement within the timeframe prescribed
39 by the state board, the state board shall issue a supplementary order
40 that either withdraws the regional board's program authority, or

sets a schedule for review of program authority after a probationary period during which additional corrective actions shall be required.

(f) During the probationary period, the state board or another regional board shall assume partial or total responsibility for the specified regional board's duties.

(g) If, at the conclusion of the probationary period, the regional board has taken and certified appropriate corrective action, the state board shall issue a supplementary order stating that the regional board's authority to implement state and federal law is not withdrawn.

(h) (1) If, at the end of the probationary period, or the end of the state board's withdrawal proceedings if there is no probationary period, the state board determines that the regional board has substantially and continually failed to meet the applicable requirements of state or federal law, the state board shall withdraw authority from the regional board, notwithstanding any other provision of this division. The withdrawal order shall state whether the state board, or another regional board, or both, shall become the implementing agency within the jurisdiction of the former regional board.

(2) Withdrawal of authority shall continue until the regional board makes, in a public hearing, certified demonstrations necessary to ensure immediate and continued compliance with applicable state and federal law.

(i) Withdrawal of authority under this section does not relieve any person from complying with the requirements of state or federal law, nor does it affect the validity of actions by the state prior to withdrawal.

SEC. 6. Section 13388 of the Water Code is amended to read:

13388. (a) Notwithstanding any other provision of this division or Section 175, a person shall be a member of the state board ~~or a regional board if he~~ if that person receives or has received during the previous two years a significant portion of his *or her* income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter. ~~This section shall become operative on March 1, 1973.~~

(b) *Notwithstanding any other provision of this division or Section 175, no person shall not be a member of a regional board if that person receives, or has received, during the previous two*

1 *years, a significant portion of his or her income directly or*
2 *indirectly from any person subject to waste discharge requirements,*
3 *or applicants for waste discharge requirements, associated with*
4 *discharges in that region pursuant to this chapter.*

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